

REMARKS

Applicants and the undersigned are most grateful for the time and effort accorded the instant application by the Examiner. The Office is respectfully requested to reconsider the rejection present in the outstanding Office Action in light of the following remarks.

In the Office Action dated November 28, 2007, Claims 1-19 were pending. Of these claims, Claims 1 and 13 are independent claims; the remaining claims are dependent claims. In the present Amendment, independent claims 1 and 13 have been rewritten as suggested by the Examiner and to address a potential 112 issue. New dependent claim 20 is also presented.

Applicants are not conceding in this application the claims amended herein are not patentable over the art cited by the Examiner, as the present claim amendments are only for facilitating expeditious prosecution. Applicants respectfully reserve the right to pursue these and other claims in one or more continuations and/or divisional patent applications. Applicants specifically state no amendment to any claim herein should be construed as a disclaimer of any interest in or right to an equivalent of any element or feature of the amended claim.

Rejections under 35 U.S.C. § 112, First Paragraph

Claims 1-13 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description of the invention requirement. Applicants respectfully request reconsideration and withdrawal of these rejections.

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Solely in order to expedite prosecution, independent claims 1 and 13 have been rewritten to recite “wherein the *provided promotion* is dependent upon an operator’s choice of *an* economic value to maximize.” The “provided promotion” language is believed to be consistent with the Examiner’s comments in the last Office Action. “[W]hich” economic variable has been replaced with “an” economic variable to address any potential antecedent basis problems with this language.

Applicants wish to make of record their respectful disagreement with the Examiner’s understanding stated in the Office Action that “the operator selected the defunct threshold based on the customer purchase amount not on the choice of which economic value to optimize.” (Office Action at 3) As noted in the previous Amendment, the customer purchase amount can be one criterion influencing the decision of where to place the threshold for certain customers. However, this is only one example of many economic value based factors that can be taken into consideration by the operator in determining where the threshold should be.

It is believed the amendments made to the independent claims obviate the Section 112 rejection. Applicants therefore respectfully request reconsideration and withdrawal of this rejection.

Rejections under 35 U.S.C. § 103(a)

Claims 1-19 stand rejected under 35 USC § 103(a) as obvious over Herz et al. (hereinafter “Herz”) in view of Dahm et al. (hereinafter “Dahm”). Reconsideration and withdrawal of the present rejections are hereby respectfully requested.

As a basis for the rejection, the Office Action characterizes Herz as “teaching monitoring of web-surfer behavior and predicting future surfer behavior and determining a range of offers and providing a promotion to the customer *based on the customer behavior.*” (emphasis added) The Office Action also characterizes Dahm as teaching “the susceptible subscriber is typically identified by comparing *stored customer profile information* with a group of predetermined threshold values associated with the profile information.”

Claims 1-20, as amended herein now depend from (and thus incorporate the subject matter of) Claims 1 and 13 to require “specifying a range of offers to be included in a set of promotions wherein the offers include optimal advertisements determined from real time learning from dynamic analyses of promotional experimentation *of the various promotions offered to various other customers*” as suggested by the Examiner. Herz and Dahm thus teach away from these claimed feature(s) and therefore cannot be properly asserted either alone or in combination (or with any other cited reference) as a basis for rejection.

Applicants thus respectfully request reconsideration and withdrawal of the outstanding rejections because neither Herz nor Dahm teach, either alone or in combination, all the recited elements of the instantly claimed invention. Furthermore, combining Herz with Dahm would not produce the instantly claimed invention. Therefore, the rejection under 35 U.S.C. § 103(a) should be withdrawn.

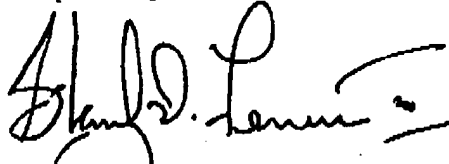
New Claim

Applicants have presented new claim 20 to more clearly and explicitly claim some of the features of the present invention, as taught by the specification. Claim 20 provides that the economic value to be maximized is "customer retention, profit, revenue, market share, customer satisfaction, customer retention, utilization of manufacturing resources, or utilization of shipping resources." It is respectfully submitted that Claim 20 is allowable over the art of record for reasons in addition to being dependent from Claim 1.

Conclusion

In summary, it is respectfully submitted that the instant application, including Claims 1-20, are presently in condition for allowance. Notice to the effect is hereby earnestly solicited. Applicants' undersigned attorney would welcome further discussion with the Office in the event there are any further issues in this application.

Respectfully submitted,



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